

November 21, 2013

Mary Henrici, General Manager
Rio Linda/Elverta Community Water District
PO Box 400
730 L Street
Rio Linda, CA 95673

Re: Your Request for Informal Assistance
Our File No. I-13-137

Dear Ms. Henrici:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your question is general in nature, we are treating your request as one for informal assistance.²

Please note, however, that our advice is based solely on the provisions of the Act; we can offer no opinion on the application, if any, of other bodies of law such as common law conflict of interest or Government Code Section 1090. We suggest that you seek legal advice to determine if these or any other conflict laws outside the Act apply to your circumstances.

QUESTION

Under the Act, may you as general manager of the Rio Linda/Elverta Community Water District ("the District") serve as contract negotiator for a Memorandum of Understanding ("MOU") between Teamster Union 150 ("the Union") and the District, when contract negotiations determine what type of medical insurance and retirement benefit you receive?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Yes. Because the District's decision applies to an entire class of employees and is not specifically tailored to particular employees in that class, Regulation 18705.5 permits you to participate in the decision. Thus, you would not have a conflict of interest as defined by the Act.

FACTS

You are the general manager of the Rio Linda/Elverta Community Water District ("the District") in Sacramento County. You are a "designated employee" of your agency and you are required to file Form 700s. Your board of directors would like you to be your District's contract negotiator for an upcoming MOU between Teamster Union 150 and the District.

You are under separate contract with the District but you have the same medical and retirement plans as the union employees because that is what is required by the California Public Employees' Retirement System ("PERS") and the group medical insurance plan. All employees of the District are subject to the same medical and retirement benefits plan.

The District's attorney, who is currently the negotiator for the District, has opined that it would be a conflict of interest for you to be the negotiator because you would benefit from the agreement through your medical insurance and retirement benefits. The union negotiations would determine what kind of medical insurance and retirement benefits you receive. You wish to know if you have a conflict of interest under the Act in negotiating this contract.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. The Commission has adopted an eight-step analysis for determining whether an official has a disqualifying conflict of interest. (Regulation 18700(b).)

Steps 1 and 2: Are you a public official who will be making, participating in making, or influencing a governmental decision?

The Act's conflict of interest provisions only apply to public officials. (Sections 87100, 87103; Regulation 18700(b)(1).) Section 82048 of the Act defines a public official as "every member, officer, employee or consultant of a state or local government agency." As the general manager of the District, you are designated employee and therefore a public official. Consequently, you not make, participate in making, or otherwise use your official position to influence any governmental decision that will have a reasonably foreseeable material financial effect on any economic interest you may have. A public official "makes" a governmental

decision when the official, acting within the authority of his or her position, votes on matter, commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.2.) A public official “participates in making” a governmental decision when the official, acting within the authority of his or position, advises or makes recommendations to the decision maker either directly or without significant intervening substantive review, by preparing or presenting any report, analysis, or opinion, orally, or in writing, that requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision. (Regulation 18702.2.)

Public officials are also prohibited from “influencing” a governmental decision. When the governmental decision is within or before the public official’s own agency or any agency appointed by or subject to the budgetary control of the public official’s agency, but the public official is not the decision-maker per se, the official is considered to be attempting to “influence a governmental decision” if the official “contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency.” (Regulation 18702.3(a).)

Because as general manager of the District, you will be negotiating an MOU with the Union on behalf of your agency, and you will be advising and making recommendations to your board of directors, will be participating and influencing a government decision.

Step 3: What are your economic interests?

The Act’s conflict of interest provisions apply only to conflicts of interests arising from an official’s interests, as described in Regulations 18703 - 18703.5. A public official has an interest in:

- A business entity in which the public official has a direct or indirect investment worth \$2,000 or more (Regulation 18703.1(a)), or in which he or she is a director, officer, partner, trustee, employee or holds any position of management. (Regulation 18703.1(b).)
- Real property in which the public official has a direct or indirect investment worth \$2,000 or more in fair market value. (Regulation 18703.2(a).)
- Any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Regulation 18703.3.)
- Any source of gifts to him or her if the gifts aggregate to \$440 or more within 12 months prior to the decision. (Regulation 18703.4.)
- His or her personal finances, including those of his or her immediate family (the “personal financial effects” rule). (Regulation 18703.5.)

Because the District is a government agency under Section 82041, the salary and benefits paid by the government to District employees are not considered “income” under Section 82030(b)(2), the “government salary exception” of the Act’s definition of “income.”

The “government salary exception” excludes from consideration:

“Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.”

Thus, the District is not a potentially disqualifying source of income.

However, a personal financial effect on government salary and benefits may still be disqualifying as an effect on personal finances. Because this is the only interest that may be affected by the governmental decision, our analysis continues with respect to the personal financial effects of the decision.

Step 4: Are your interests directly or indirectly involved in the decision?

In order to determine if a governmental decision’s reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the officials’ economic interest is directly or indirectly involved in the governmental decision. (Regulation 18704(a).) Under Regulation 18704.5 a public official is deemed to be directly involved in decisions that have *any* financial effect on the official’s personal finances. A decision regarding an alternative benefits package would have a financial effect on the personal finances of an official covered by those benefits. Therefore, an official’s economic interest in his or her respective personal finances would be *directly* involved in the decision.

Step 5: Will there be a material financial effect on your interests?

Once the degree of involvement is determined, Regulation 18705 in the conflict of interest analysis addresses the applicable materiality standards. For a personal financial effect, Regulation 18705.5(a) provides:

“(a) A reasonably foreseeable financial effect on a public official’s or his or her immediate family’s personal finances is material if it is at least \$250 in any 12 month period. . . .”

However, Regulation 18705.5(b) provides an exception for decisions that affect only the salary, per diem, or reimbursement for expenses of the public official. It states:

“(b) The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives, from a federal, state, or local government agency shall not be deemed material, unless the decision is to . . . set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position”

Applying this rule to your question, because Regulation 18705.5(b) takes into account the “government salary exception” set forth in Section 82030(b)(2), an official may participate in a decision even when there is a financial effect is on the official’s own government salary or benefits if the salary or benefits in question are for all of government agency employees who are in the same job classification or position.

The benefits package addressed here meets that standard. It will apply equally to all employees of the District. Accordingly, we conclude that the exception provided in Regulation 18705.5(b) applies. Therefore, under the Act you may participate in negotiations between the District and the Union concerning the MOU.

Given this exception, you do not have an economic interest in the governmental decision, and our analysis ends at Step 5.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl